

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, California 94105**

**NOTICE OF PROPOSED EMERGENCY READOPTION
PURSUANT TO CALIFORNIA INSURANCE CODE SECTION 12921.7**

**Consideration of Losses and Loss Exposure
In Residential Property Insurance Rating and Underwriting**

File No. ER03030135

March 4, 2004

The regulation text attached to this Notice supersedes the regulation text attached to the Notice of Proposed Emergency Readoption Pursuant to California Insurance Code Section 12921.7 which was mailed on February 24, 2004.

The regulation text that was attached to the Notice of Proposed Emergency Readoption Pursuant to California Insurance Code Section 12921.7 that was mailed on February 24, 2004 was incorrect.

The Notice of Proposed Emergency Readoption Pursuant to California Insurance Code Section 12921.7 that was mailed on February 24, 2004 remains unchanged.

This regulation will be submitted to the Office of Administrative Law not less than five (5) working days after the mailing of this Notice. Questions regarding this rulemaking action should be directed to: Donald P. Hilla, Senior Staff Counsel, Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, CA 94105, hillad@insurance.ca.gov. Electronic submissions are encouraged but should be accompanied by hardcopy submissions.

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TEXT OF PROPOSED EMERGENCY REGULATION

Adopt Title 10, California Code of Regulations, Chapter 5, Subchapter 3, Article 7.2, Section 2361 to read as follows:

Section 2361. CONSIDERATION OF LOSSES AND LOSS EXPOSURE IN RESIDENTIAL PROPERTY INSURANCE RATING AND UNDERWRITING

(a) This section applies to residential property risks subject to California Insurance Code Section 675.

(b) For purposes of this section, the following definitions apply when an insurer considers losses or loss exposure in residential property insurance rating and underwriting:

(1) Substantial Relationship to Loss Exposure: A substantial relationship to the loss exposure exists when a hazard, physical condition, or liability exposure creates a material and identifiable effect on the likelihood of a covered loss;

(2) Increased Risk of Loss: An increased risk of loss exists when a property or liability hazard or physical condition is identified or discovered which both bears a substantial relationship to the loss exposure and presents a greater likelihood of future loss than if the hazard or condition did not exist;

(3) Fully Remedied or Otherwise Resolved: A fully remedied or otherwise resolved loss or loss exposure exists when:

(i) the property has been returned to a state of repair that is equal or superior to the condition existing prior to the occurrence or condition which created the increased risk of loss, or

(ii) the liability hazard insured against has been reduced to equal or below the level existing prior to the loss or loss exposure, or

(iii) the increased risk of loss has been entirely eliminated because the property is no longer owned by the insured, the liability hazard is no longer the responsibility of the insured, the policy no longer provides coverage for that exposure, or the condition that caused the increased risk of loss has been removed.

(4) Adverse Underwriting Decision: An adverse underwriting decision is as defined in California Insurance Code Section 791.02.

(c) An adverse underwriting decision based on losses or loss exposure, when otherwise allowed by law, shall be based upon conditions of the individual risk which bear a substantial relationship to the loss exposure and which present an increased risk of loss when compared to other risks eligible for coverage under the insurer's underwriting guidelines. An insurer shall not base, in whole or in part, an adverse underwriting decision on losses or loss exposures that have been fully remedied or otherwise resolved. Losses or loss exposures that have been fully remedied or otherwise resolved are no longer substantially related to the risk of loss.

(d) An insurer shall not base an adverse underwriting decision, in whole or in part, on an inquiry regarding coverage, unless a hazard or condition is identified which both bears a substantial relationship to loss exposure and presents an increased risk of loss.

(e) An insurer shall gather adequate information to determine that an increased risk of loss exists before a loss, loss exposure, or an inquiry with respect to coverage can be used as grounds for an adverse underwriting decision. In accordance with California Insurance Code Section 791.12, an insurer cannot rely solely on information obtained from an insurance-support organization. If the information is from an insurance support-organization, the insurer shall obtain further relevant information in addition to the material obtained from the insurance-support organization. Sources for this information may include the insurance application or supplemental application, telephone inquiry, written inquiry, and physical inspection.

(f) An insurer making an adverse underwriting decision shall maintain documentation detailing the hazards or physical conditions which created an increased risk of loss and how this information was considered in policy rating or underwriting. This documentation shall be maintained during the time in which the policy is in force and otherwise as required by law.

NOTE: Authority cited: Sections 679.71, 791.02, 791.12, 1857, 1857.2, 1857.3, 1857.7, 1857.9, and 1861.05 and 12926, Insurance Code. Reference: Sections 675, 676, Article 6.5, 790 et seq. 791.10(a), 1861.03 and 12926, Insurance Code.